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EXTRAORDINARY

PART II—Section 3

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No. 208] NEW DELHI, SATURDAY, AUGUST 8, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 25th July 1953

S.R.O. 1547.—Whereas the election of Sardar Tirath Singh, as a Member of the Legislative Assembly of the State of Patiala & East Punjab States Union, from the Dhuri Constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Bachittar Singh son of Shri Mit Singh of village Jahangir, Tehsil Dhuri, District Barnala;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, BARNALA (PEPSU)

ELECTION PETITION No. 81 of 1952

(Dhuri constituency of the Patiala & East Punjab States Union
Legislative Assembly)

CORAM:

Shri Jagjit Singh M.A., LL.B.—*Chairman.*

Shri Shiva Gopal Mathur, B.A., LL.B.—*Member.*

Shri Dalip Singh Jain, M.A., LL.B.—*Member.*

Bachittar Singh son of Mit Singh, Jat of village Jahangir, Tehsil Dhuri,
District Barnala.—*Petitioner.*

Versus

1. Shri Tirath Singh son of S. Narain Singh, Patiala;
2. S. Hazura Singh son of S. Dial Singh of village and P.O. Bhasaur, Tehsil Dhuri, District Barnala;
3. S. Birinder Singh son of S. Balwant Singh, Kothi late R. B. Narain Singh, Railway Road, Sangrur;
4. S. Kartar Singh, son of S. Amar Singh, village and P.O. Kanjhla, Tehsil Dhuri, District Barnala;
5. S. Hardyal Singh son of Kahla Singh, Advocate, Alauran Gate, Nabha;
6. Shri Rajinder Paul son of Kirpa Ram, Advocate, Dhuri;

7. S. Gurdev Singh son of Harnam Singh, village and P.O. Ghanaur Kalan, Tehsil Dhuri, District Barnala;
8. S. Sarwan Singh son of Jai Singh, New Market, Dhuri;
9. S. Bhupinder Singh of Pherwahi, District Barnala;
10. S. Mali Singh son of Bishan Singh of village Kakerwal, Tehsil Dhuri, District Barnala.—*Respondents.*

PRESENT:

Shri Mun Lal Kalia and S. Amar Singh, counsel for the petitioner.
 Shri Puran Chand, counsel for Shri Tirath Singh, respondent No. 1.

JUDGMENT

1. During the last general elections Dhuri was one of the constituencies in the Patiala and East Punjab States Union for the Legislative Assembly of that State. Shri Tirath Singh, a former Minister and a candidate of the Congress Party, was declared to have been duly elected from that constituency, but his election was called in question through an election petition.

2. Shri Bachittar Singh petitioner urged in his election petition that the result of the election had been materially affected by the improper rejection of the nominations of two candidates, namely Shri Bhupinder Singh Mann and Mali Singh. Allegations were also made against Shri Tirath Singh, respondent No. 1, that he had been guilty of certain corrupt and illegal practices. On these grounds two alternative reliefs were sought. Firstly it was prayed that the election be declared to be wholly void. Secondly it was requested that the election of the respondent No. 1 be declared to be void and Shri Sarwan Singh, respondent No. 8, be declared to have been duly elected to the Legislative Assembly of the Patiala and East Punjab States Union from Dhuri constituency.

3. Particulars regarding the corrupt and illegal practices, alleged to have been committed by the respondent No. 1 or some other persons with his knowledge and connivance, were mentioned in three lists (marked A, B and C) attached to the election petition.

4. List 'A' contained eight instances of corrupt practices under the Sub head 'Bribery'. List 'B' referred to three instances of 'Undue influence'. The last list described 'Other corrupt practices of obtaining assistance of Government servants'.

5. Full details regarding these corrupt practices will be given while discussing the issues. At this stage, however, it will be sufficient to state that according to list 'A' Shri Tirath Singh persuaded another candidate to withdraw and as a reward thereof raised the status and grade of his son, granted good work allowance to the sweepers of the Small Town Committee, Dhuri, gave Municipal land to certain residents of Dhuri without charging any compensation, indiscriminately opened schools in his constituency, appointed certain persons of Dhuri constituency as teachers, accorded recognition to a school at Dhuri against rules, personally organised Panchayats at some villages in an illegal manner, got a water out-let opened for a village a day before the polling was to commence and managed to get the polling staff of many polling stations changed. All these acts were said to have been done with the object of eliminating another candidate from the contest, inducing certain voters to vote for him and to secure the help of some Government employees in his election work.

6. A body guard of the respondent No. 1 was alleged to have coerced the residents of village Ghanaur and on their refusal to vote for Shri Tirath Singh to have fired upon them. Shri Tirath Singh was himself described to have visited a village called Manwala, in his constituency, and to have restrained the voters of that place from taking part in voting through intimidation. The third allegation made in list 'B' was to the effect that 19 residents of village Dhuri were called to the police station and at the instance of the respondent No. 1 were threatened with prosecution unless they agreed to vote for him.

7. Further allegations against the respondent No. 1 consisted in his obtaining assistance from nine public servants for his election campaign. Besides school mistresses and the entire Panchayat staff were also contended to be for him during election days. Identifying figures on ballot boxes have been changed (*vide* list C).

8. Out of the respondents, Shri Tirath Singh alone contested the election petition. Shri Sarwan Singh, respondent No. 8, supported the petitioner. The other respondents were proceeded against *ex parte*.

9. The contesting respondent (Shri Tirath Singh) pleaded that his election was not void because there had been no improper rejection of any nominations and also as the allegations regarding corrupt and illegal practices were all false. It was further objected by him that the election petition had not been filed within the prescribed period of limitation. On the point that the petitioner was an elector in Dhuri constituency, as stated in para. 1 of the election petition, the respondent expressed his ignorance.

10. From these pleadings of the parties the following issues were raised:—

Issues	Findings
1. Whether the petitioner is registered as an elector in the Electoral Roll of Dhuri constituency for the Patiala and East Punjab States Union Legislative Assembly?	Yes.
2. Whether the nomination paper filed by S. Bhupinder Singh Mann respondent No. 9 was improperly rejected as alleged in para. 2 of the petition and has it materially affected the result of the election?	No.
3. Whether the nomination paper filed by S. Mali Singh respondent No. 10 was improperly rejected as alleged in para. No. 3 of the petition and has it materially affected the result of the election?	Yes.
4. Whether Shri Rajinder Paul Advocate, respondent No. 6, was persuaded by the respondent No. 1 to withdraw from the contest and as a reward thereof his son Dr. N. P. Bector was raised to the position of second physician at Rs. 600 p.m. in grade of Rs. 600 to Rs. 1200?	No.
5. Whether the sweepers of Small Town Committee, Dhuri, were granted good work allowance at Rs. 5 p.m. for three months only during the election days in order to induce them to vote for the respondent No. 1?	Yes.
6. Whether the 24 residents of Dhuri town, named in para. 3 of appendix "A" were granted municipal land by the respondent No. 1 in abuse of his powers as a Minister in order to persuade them to vote for him?	No.
7. Whether the respondent No. 1, in abuse of his powers as Minister for Education, opened in his constituency twelve schools mentioned in para. 4 (A) of Appendix "A" in order to induce the voters of the villages to vote for him?	No.
8. Whether the respondent No. 1, in abuse of his powers as Minister-in-charge Education Department, appointed 17 persons of Dhuri constituency as teachers, as mentioned in para. 4 (b) of Appendix "A" with a view to induce them to vote for him?	No.
9. Whether Sanatan Dharam School, Dhuri was granted recognition by the respondent No. 1 against the rules with a view to induce the persons interested in the institution to vote for him?	No.

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| 10. Whether respondent No. 1 personally organised Panchayats at the eight villages, mentioned in para. 6 of Appendix "A" with a view to persuade residents of those villages to vote and work for him? | No. |
| 11. Whether respondent No. 1, through his influence as Minister, arranged to have opened canal water outlet for village Benra on the condition that the residents of that village would vote for him? | No. |
| 12. Whether Dhanna Singh, a bodyguard of respondent No. 1, intimidated the villagers of Ghanaur to vote for the respondent No. 1 as alleged in para. 1 of Appendix "B"? | No. |
| 13. Whether the voters of village Manwala were intimidated by the respondent No. 1 for abstaining from voting on 10th January 1952? | No. |
| 14. Whether the residents of village Dhuri, named in para. 3 of the Appendix "B" were called at the instance of respondent No. 1 to the police station Dhuri on 1st January 1952 and were coerced to vote for respondent No. 1, as alleged? | No. |
| 15. Whether the respondent No. 1 obtained assistance of the nine Government servants, mentioned in para. 1 of Appendix "C", for the furtherance of the prospect of his election, as alleged? | No. |
| 16. Whether the incidents enumerated in issues Nos. 4 to 15, or any one of them, amount to corrupt or illegal practice and what is its effect? | |
- The allegations covered by issue No. 5 amount to the committing by the respondent No. 1 the corrupt practices of bribery, which entails disqualification under Section 140 of the Representation of the People Act, 1951, and declaration of the election to be void.
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| 17. Whether the clerical staff of Panchayats was ordered to remain at Dhuri and worked for the respondent No. 1 during the election days and, if so, with what effect? | No. No effect. |
| 18. Whether the Presiding Officer of Badhalbadh polling station placed wrong identifying figures on the ballot boxes as is alleged in clause (a) of para. 5 of Appendix "C" and, if so, with what effect? | No. No effect. |
| 19. Whether the election staff of Dhuri constituency consisted of employees of the Education Department, including Bibi Surjit Kaur sister of the respondent No. 1, and if so, with what effect? | No. No effect. |
| 20. Whether the nine persons mentioned in para. 4 of the application, dated 10th November 1952, were got changed overnight by the respondent No. 1 in place of certain members of the poll-staff already appointed by the Returning Officer as alleged in para. 8 of Appendix "A"? | No. |

- 21 Whether the election petition has not been presented within time. It was presented within limitation.
22. Whether the election of respondent No 1 from Dhuri constituency of the Patiala & East Punjab States Union Legislative Assembly should be declared to be wholly void or to what other relief the petitioner is entitled?

The election from Dhuri constituency should be declared wholly void and the respondent No. 1 should also be disqualified u/s 140 of the Representation of the People Act besides being made liable for the costs of the petitioner.

11 Good deal of documentary and oral evidence was lead in respect of the different issues. Before the discussion of the issues and the evidence is taken up it will not be out of place to mention that on the day the petition came up for arguments Shri Muni Lal Kalia, counsel for the petitioner, acted in an improper manner. Even though the recording of the evidence took nearly three months and the memorandum of statements ran into more than 250 pages, the learned counsel finished his arguments in a few minutes time by simply stating that different issues had been proved from the documents produced and the evidencce of the witnesses examind in the case. He did not take the trouble of referring to the contents of a single statement or document. Even the counsel who was assisting Shri Muni Lal Kalia as a junior (Shri Amar Singh Ambalvi) was amazed at the perfunctory and strange nature of the arguments and requested the Tribunal to allow him one day's time, so that he may be able to argue the case in a proper manner. His request was acceded to. On the next day he addressed us on some of the issues, but did not complete his arguments by saying that due to some urgent work he had to go out of station. From the side of respondent No. 1, however, the case was well argued by Shri Jagan Nath Kaushal.

12. Election cases are of a very important nature and generally have far reaching consequences. Lawyers who even in such cases act with gross carelessness—almost amounting to betrayal of their client's interests—possibly can have no great regard for the high ethical standards expected from their noble profession.

13. Now we come to the issues in the case and briefly give our reasons for the findings which have been given thereon.

14. *Issue No 1*—Under Section 81 of the Representation of the People Act, 1951, an election petition can be presented either by a candidate or an elector. The petitioner not being a candidate could file the election petition calling in question the election of Shri Tirath Singh if he was an elector in Dhuri constituency. Electoral Roll (Ex P/38) of village Jahangir, one of the villages in Dhuri constituency during the last general elections, was produced. Entry No. 170 in it relates to Bachitar Singh son of Mit Singh, who is the petitioner in the case. The petitioner was thus an 'elector' and had a right to present the election petition. This fact was even conceded during the arguments by the counsel for the respondent No. 1. The issue is, therefore, decided in favour of the petitioner.

15 *Issue No 2*.—Shri Bhupinder Singh Mann was one of the candidates for the Legislative Assembly from Dhuri constituency. He had filed nomination papers from two constituencies. His nomination was rejected from Dhuri constituency, but he successfully contested election from Maur constituency on Akali or Panthic party ticket.

16. The nomination paper (Ex P1/A) presented by him to the Returning Officer for Dhuri constituency was assigned serial No. 30. The first day of December, 1951, was fixed for scrutiny of nomination papers. As the identity of the proposer and the seconder of Shri Bhupinder Singh Mann was disputed the Returning Officer directed that they should be produced on 3rd of December. On that day they did not turn up when the nomination paper was rejected.

17. The Returning Officer (Sodhi Surjit Singh) was examined as P.W. 42. His evidence shows that an objection had been raised before him about the identity of the proposer and the seconder and that he rejected the nomination paper when they did not appear before him on the date fixed for their appearance. Orders dated 1st and 3rd of December, 1951, on the nomination paper are also to the same effect.

18. Some attempt was made from the petitioner's side to show that in fact the proposer and the seconder had gone to the office of the Returning Officer and kept waiting there till evening time but were not called. The evidence produced in this connection is, however, of the flimsiest kind and no weight can be attached to it.

19. Shri Bhupinder Singh Mann (P.W. 2) did not go to the office of the Returning Officer on 3rd of December. According to him he directed Sarwan Singh respondent No. 8 and some other supporters of his to make arrangements for taking the proposer and the seconder to the Returning Officer. Bakhtawar Singh (P.W. 16), who was the proposer of Shri Bhupinder Singh Mann, stated that on the date fixed by the Returning Officer he and the seconder remained present in front of his office from 9 A.M. to 5 P.M. but were not called. To the same effect is the statement of Sarwan Singh seconder (P.W. 44).

20. Both the proposer and the seconder admitted that they did not go inside the office of the Returning Officer and made no attempt to contact him when he was leaving his office and was passing through the compound in which they were sitting. This appears highly improbable. It is also not possible to believe that they were not called. Sodhi Surjit Singh (P.W. 42) was definite that he did direct for all persons concerned with Dhuri constituency to be called. It is thus certain that at the time when the nomination paper of Shri Bhupinder Singh Mann was called, on 3rd of December, 1951, neither the proposer nor the seconder was present.

21. Under Section 36 of the Representation of the People Act, 1951, the Returning Officer is empowered to make a summary inquiry regarding the identity and eligibility of the candidate or his proposer or seconder. The identity of the proposer and the seconder having been objected to, the order of the Returning Officer requiring the proposer and the seconder to appear before him on 3rd of December was perfectly legal. When on that day the proposer and the seconder did not turn up, he had almost no option but to reject the nomination.

22. The reasons why Shri Bhupinder Singh Mann was not serious in producing his proposer and seconder before the Returning Officer is not far to seek. As already pointed out above he had filed nomination papers from Maur constituency as well and it was from that constituency that he was given Akali party ticket.

23. We have, therefore, no hesitation in holding that the rejection of the nomination paper of Shri Bhupinder Singh Mann, respondent No. 9, was in no way improper and as such the rejection of his nomination could not possibly affect the result of the election. Shri Amar Singh Ambalvi, who had partly argued the case from the side of the petitioner, also did not press this issue. The issue is accordingly decided against the petitioner.

24. *Issue No. 3.*—The nomination paper (Ex. P.9/A) of Shri Mali Singh, respondent No. 10, was rejected by the Returning Officer on 3rd of December, 1951, on the ground that instead of depositing Rs. 250, as required by Section 34 of the Representation of the People Act, 1951, a deposit of Rs. 125 only was made. The relevant portion of the order (Ex. P.25/A) reads as follows:—

"The candidate has deposited a sum of Rs. 125 only. He has nowhere stated that he belonged to one of the scheduled castes.....He did not claim the concession under the proviso to Section 34 of the Representation of the People Act. The Returning Officer issued a direction that a sum of Rs. 250 was to be deposited in the Treasury. The candidate afterwards deposited a sum of Rs. 125 only. It is clear from the facts stated above that the candidate never claimed that his case was covered by proviso to Section 34 and that the Returning Officer had already directed that the deposit to be made by him was to be a sum of Rs. 250. As the candidate has failed to deposit the required amount he cannot be deemed to be duly nominated."

25. It may be mentioned that Shri Mali Singh first applied (*vide* Ex. R.2/A) to the Returning Officer that as he was going to stand for Pepsu Legislative Assembly from Dhuri constituency and his nomination fee may be got deposited.

The Returning Officer ordered the Pay and Accounts Officer, Barnala, to get Rs. 250 deposited on account of nomination fee. The candidate got challan forms filled up for Rs. 125 instead of Rs. 250 and deposited that amount in the Treasury.

26. Thus a deposit of Rs. 125 only was made and a Treasury Receipt was attached to the nomination paper, which was presented on 23rd November 1951. On the day fixed for scrutiny (i.e. 1st December 1951) Shri Tirth Singh objected that the deposit of Rs. 125 was insufficient in the absence of a certificate that the candidate belonged to a scheduled caste. Shri Mali Singh requested for time. The consideration of the nomination paper was adjourned to 3rd December 1951, on which date it was rejected.

27. In his statement the Returning Officer has made it clear that the fact of Shri Mali Singh being a member of a scheduled caste was not disputed and the objection raised was that in the absence of a certificate from any magistrate the proper amount of deposit was of Rs. 250. This version appears to be correct. The order of the Returning Officer, dated 1st of December, 1951, was to the following effect:—

“Objected to by S. Tirath Singh on the ground that Rs. 125 is insufficient in the absence of certificate. The candidate wants time to rebut it. Adjourned to 31st December 1951”.

28. If the respondent No. 1 had challenged the fact that Shri Mali Singh was not a member of a scheduled caste the order of the Returning Officer would have been quite different. It is also significant to note that Shri Mali Singh was not required to produce evidence regarding his belonging to a scheduled caste but was required to show on the adjourned date that deposit of Rs. 125 was sufficient in the absence of a certificate.

29. Coming to the legal aspect of the matter it may be stated that Section 34 of the Representation of the People Act, 1951, requires every person standing as a candidate for election to the Legislative Assembly of a State to deposit a sum of Rs. 250. Proviso (a) of this Section, however, makes an exception in the case of candidates who are members of any of the scheduled castes. Such candidates have only to make a deposit of Rs. 125.

30. Section 34 or proviso (a) thereof does not require a candidate who is a member of any of the scheduled castes to attach with his nomination paper a certificate from a magistrate.

31. The prescribed form for nomination has been given in Schedule II of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951. The form does provide for declaration to be made by a candidate who is a member of any of the scheduled castes or any of the scheduled tribes and a verification by a Magistrate in the case of an election in a Parliamentary or Assembly Constituency where the seat or any of the seats to be filled is reserved for the scheduled castes or for the scheduled tribes (*vide* Note 6 of the form).

32. Dhuri was a single member constituency and the seat from there was not reserved for the scheduled castes or scheduled tribes. It was, therefore, not at all necessary for Shri Mali Singh to either make a declaration about his being a member of a scheduled caste or to obtain verification from a Magistrate. All that was required was that if he was in fact a member of any of the scheduled castes recognised by the Constitution (Scheduled castes) Order, 1950, he could make a deposit of Rs. 125 only in order to fulfil the requirements of Section 34 of the Representation of the People Act, 1951.

33. The fact of Shri Mali Singh, who is a shoe maker (Mazhabi), being a member of Scheduled castes, as recognised for the State of Patiala and East Punjab States Union, being undisputed (as stated by the Returning Officer) the deposit made by him was in accordance with law. It follows that the order rejecting the nomination paper was improper and illegal. When the nomination paper of the respondent No. 10 was illegally and improperly rejected the result of the election was materially affected.

34. Shri Mali Singh, in his statement before the Tribunal, took up the position that though he was a nominee of the Scheduled Caste Federation he would not have contested election against the Congress candidate. We are, however, not prepared to believe Shri Mali Singh on this point. If he had so much sympathy with the Congress candidate, where was the fun in presenting the nomination paper and putting himself to the botheration of making a cash deposit. Whether he would have actually withdrawn even if his nomination had been accepted cannot be said for certain. The strong presumption regarding the

result of the election having been materially affected as a result of the rejection of the nomination paper of Shri Mali Singh has, therefore, not been rebutted. This presumption would require the most conclusive evidence for its rebuttal, which is lacking in this case.

35. It was urged before us that the Legislative Assembly of this State having been dissolved by a proclamation of the President of India, dated 5th of March, 1953, it is not necessary to decide this issue. We do not see the force of the argument. Irrespective of the dissolution of the Assembly all the points raised in the election petition and regarding which issues have been framed have to be determined, especially when complete evidence has been led from the opposite sides.

36. The result is that the issue is decided in favour of the petitioner.

37. *Issue No. 4.*—The allegation covered by this issue was described in para. 1 of list A, accompanying the election petition. It was mentioned that Shri Rajinder Paul Advocate of Dhuri, respondent No. 6, was persuaded by the respondent No. 1 to withdraw from the election contest and as a reward thereof his son, Dr. N. P. Bector, was raised to the position of "Second Physician" at Rs. 600 p.m. in the grade of Rs. 600—1200, in the Rajindra Hospital, Patiala.

38. For a proper appreciation of the implications of this allegation made against the respondent No. 1 it would be better to start with those facts which are undisputed.

39. The first Congress Ministry was formed in the State of Pepsu in May, 1951, as an interim arrangement. Shri Tirath Singh was included in the Cabinet of Ministers. The departments of Education, Medical, Panchayats and Local Bodies were included in his portfolio. Thus during the seven months preceding the holding of general elections he had control over the above mentioned departments of the State.

40. In the year 1948 Dr. N. P. Bector, son of Shri Rajinder Paul, who had a distinguished acadactical career throughout, was sponsored by the erstwhile Patiala State for the course of M.R.C.P. (London). He was granted stipend as admissible to Central Government stipendiaries (non Government servants) and a bond was taken from him to serve the State for a minimum period of ten years after completing his course abroad. There was no definite commitment on the part of the State Government to appoint him in any particular grade on completion of higher studies. Even before his return from England, a recommendation was made to the Government by the Director of Health and Medical Services for his appointment as a second physician in the specialist's grade of Rs. 600-1200 (*vide* memorandum No. 429/M, dated 15-2-1951 marked as Ex. R. 15/A). Afterwards Dr. N. P. Bector also submitted a representation for being placed in that grade. This representation was recommended and forwarded by the Director of Medical Services and Health (*vide* endorsement dated 27th June 1951, marked Ex. 16/A).

41. The Council of Ministers considered the case of foreign qualified doctors, including that of Shri N. P. Bector. Shri Ram Dayal (P.W. 41), Superintendent Secret Branch, Home Department brought the necessary record and produced a certified copy of the proceedings of the Cabinet dated 19th October, 1951 (Ex. P. 20). It was decided that all these doctors will be fixed in the grade of Rs. 400-25-700. So far as Dr. Bector was concerned, it was specifically mentioned that he too will be in the grade of Rs. 400-25-700 as the Government had made no commitment to give him the grade of Rs. 600-1200. On the basis of these decisions necessary orders were passed and communicated to the departments concerned (*vide* endorsements No. ED/M-2(50) 51/26416, dated 3rd November 1951 marked as Ex. P.14/A.). After two months of the Cabinet decision, on 19th December 1951 the respondent No. 1, as minister incharge Medical Department, submitted a note (Ex. P.21/A) for creation of a second post of physician in the Rajindra Hospital, Patiala, with immediate effect. There was rule that no case in regard to which the Finance Department is required to be consulted, save in exceptional circumstances under the direction of the Chief Minister, should be discussed by the Cabinet unless the Finance Department has been given an opportunity to consider it. In spite of that rule the proposal was some-how considered on the same day and was approved but was to take effect from 1st of April (*vide* Ex. P.22/A). Shri Nihal Singh Takshak, who in those days held the portfolio of Finance, invited the attention of the Hon'ble the Chief Minister to the irregular manner in which the proposal for creation of the post of second physician was rushed through. In his D. O. letter dated 16th January, 1952 (Ex.

P. 23/A) he went to the extent of saying that to decide such matters in a manner in which it has been done is bound to bring in the question of their bonafides. It was, therefore, decided to again place the matter before the Cabinet. For one reason or the other that could not be done in the time of the Congress Ministry. Ultimately on 1st of May, the Post of second physician was abolished. This later order (Ex. P.24/A) was passed when the Congress Ministry was no longer in power but had been succeeded by the Ministry of the United Front Party.

42. On 26th of December, 1951, the respondent No. 1 had sent a note (Ex. P. 15/A) from Dhuri to the Secretary Education and Health informing him that Dr. N. P. Bector had been appointed by him as second physician with effect from 1st of April, 1952, on the newly created post. A direction was given that the case need not be sent to the Public Service Commission for fresh recruitment to this post and the person appointed may be informed. An order, dated 3rd January 1952, was accordingly issued by the Under Secretary to the Government notifying the appointment of Dr. Bector as second physician in the grade of Rs. 600-1200 with effect from 1st of April, 1952 (Ex. P.14/A). After the post of the second physician was abolished, due to the decision of the Cabinet dated 1st of May, 1951, formal orders in this connection were again issued on 20th June 1952 (Ex. P.18/A).

43. Some oral evidence was also lead from the petitioner's side to connect the appointment of Dr. Bector as a second physician with the subsequent withdrawal of his father Shri Rajinder Paul from the election contest. That evidence, however, is of no help and consists of the statements of interested persons.

44. Sant Singh of Dhadogal (P.W. 61) mentioned that on 5th of January, he happened to go to Dhuri and meet Shri Rajinder Paul who told him that on account of his son's pressure he had withdrawn from the contest. Shri Sadhu Ram (P.W. 67), stated that after the date allowed for withdrawal the respondent No. 6 (Shri Rajinder Paul) was canvassing and taking active interest in his election. He added that in his presence, two days before the polling was to start, the respondent No. 1 along with Dr. N. P. Bector and Shri Brish Bhan came to the house of the respondent No. 6, who then told him that at the instance of his son and Shri Tirath Singh he had decided not to take further interest in his election. Sant Singh Zaildar of Kakerwal (P.W. 52) also deposed about going to Shri Rajinder Paul along with S. Tirath Singh when the former told them that he would withdraw from the contest only if his son was given a better grade. He further gave evidence about his going again to Shri Rajinder Paul accompanied by Shri Tirath Singh a day before the commencement of polling when he (i.e. Shri Rajinder Paul) agreed to withdraw from the election as his son had been given the higher grade.

45. Shri Rajinder Paul (P.W. 10) of course made a statement that he stopped taking interest in his election and ceased his efforts a day before the commencement of polling. He gave an explanation for his doing so by stating that though he was supported by the Scheduled Caste Federation and Jan Sang, yet he had promised with voters in his constituency that in case of being successful he shall join the Congress Party or if he found that by his contesting the election there was danger of the Congress Candidate becoming unsuccessful he would retire from the field.

46. This much is also not altogether certain that Shri Rajinder Paul did in fact withdraw from the contest. He secured 272 votes. If he had really withdrawn (using that term in its non-technical sense) and stopped all his activities no electors were likely to vote for him.

47. Sant Singh of Dhadogal (P.W. 61) and Sant Singh Zaildar of Kakerwal (P.W. 52) cannot be regarded as independent persons. P.W. 61 Sant Singh is an admitted supporter of the Akali party while the other Sant Singh was a proposer of Shri Sarwan Singh respondent No. 8. So far as Shri Sadhu Ram (P.W. 67) is concerned there is directly nothing against him, but he too appears to have unduly tried to favour the petitioner. He stated that the respondent No. 1 accompanied by Dr. N. P. Bector and Shri Brish Bhan came to the house of Shri Rajinder Paul in his presence. He, however, does not say as to what talk took place between these persons. He as well mentioned the presence of about 20 men including Balwant Singh Zakhmi, Hardyal Singh Sodhi and Sant Singh Zaildar on this occasion. Except Sant Singh Zaildar none of these persons were produced. Even Sant Singh Zaildar contradicted Sadhu Ram by stating that Shri Tirath Singh was not accompanied by any other persons, except the witness, when he went to the house of Shri Rajinder Paul. It will thus have to be said that the oral evidence in the case is practically useless and has to be discarded as unreliable and probably false.

48. From the circumstantial evidence, based on documents and orders, already referred to above, some suspicions do arise.

49. Dr. N. P. Bector being a highly qualified person was strongly recommended by the Director of Medical Services and Health (R.W. 1) for the post of second physician. If, therefore, he had been given that post in an ordinary manner, nobody could have raised his little finger and said that any irregularity had been committed. When the Council of Ministers, on 19th October 1951, considered the recommendation of the Director of Medical Services and Health and the representation submitted by Dr. Bector, Shri Tirath Singh was fully aware of his claim and high qualifications. In spite of that he did not object to the representation being turned down with the result that Shri N. P. Bector was granted the same grade of Rs. 400—25—700 as was sanctioned for other foreign qualified doctors.

50. Nomination papers for Dhuri constituency could be presented upto some date in the last week of November, 1951. The nomination papers of Shri Mali Singh and Bhupinder Singh Mann which were produced in evidence, had been presented on 23rd and 24th of November, 1951. The date fixed for scrutiny was 1st of December as has been stated by Sodhi Surjit Singh (P.W. 42). Shri Rajinder Paul was also one of the candidates from Dhuri constituency and on his nomination paper some objection had been raised by the respondent No. 1, a fact which has been admitted by him. The nomination of Shri Rajinder Paul having been accepted by the Returning Officer and further as he did not withdraw under Section 37 of the Representation of the People Act, 1951, he was expected to give a fight to the other candidates. The sudden proposal which was, therefore, made by the respondent No. 1 for the creation of the post of second physician on 19th December, when only a few days remained in the start of polling could be interpreted to mean that this step had been taken to induce one of the rival candidates to withdraw from the field of contest.

51. It can also be said that the post which was sanctioned was to take effect from 1st of April, 1952, and if the respondent No. 1 was merely taking up the case of a deserving doctor, there was no occasion for him to immediately announce the appointment even without consulting the Public Service Commission. The letter sent by the respondent No. 1 from Dhuri Camp, whose correctness has been admitted by him, does show that for some reason he wanted to get the appointment of Dr. N. P. Bector as second physician notified without any delay. The following portion of the letter speaks for itself:—

".... I, therefore, appoint him as second physician in the Rajindra Hospital in the grade of Rs. 600—1200 with effect from 1st of April, 1952. In view of the commitment of the Government the case need not be sent to the Public Service Commission for fresh recruitment of this job. The member may be informed accordingly.

(Sd.) Tirath Singh,

26-12-1951".

In reality there being no commitment on the part of the Government to provide Dr. Bector as a second physician, the Public Service Commission should ordinarily have been consulted and it may not have been necessary to notify the appointment some months ahead of the date from which it was to take effect.

52. The circumstances are, therefore, highly suspicious and can fit in with the allegation that the sudden revival of interest on the part of the respondent No. 1 in Dr. N. P. Bector was merely a device to induce his father Shri Rajinder Paul to withdraw from the contest as his continuing to fight the election may have jeopardized his (Shri Tirath Singh's) own prospects of success. Another explanation of the unusual conduct of the respondent No. 1 could be that he may have acted under some other influence without any idea of taking advantage of this appointment. Shri Rajinder Paul, who appeared as petitioner's witness, categorically denies that any inducement was offered to him to withdraw from the election or that the appointment of his son as second physician was made by way of a reward for his having stopped taking interest in his election.

53. From what has been stated above, it will be evident that though the circumstances are unusual and of a suspicious character yet they are not such which may not be capable of any other interpretation except the one given by the petitioner. To remove this uncertainty some reliable evidence should have been led to show that Shri Rajinder Paul had in fact ceased all his election activities when the polling was to commence just in a day or two and further as to why that was done. A charge of corrupt practice of bribery is of the nature of a

criminal charge and the standard of proof required in the matter is the same as that in the case of a criminal trial. Suspicions, however strong, cannot be allowed to take the place of proof. We, therefore, hold that the petitioner has failed to strictly prove the issue and accordingly decide it against him.

54. Issue No. 5.—The next allegation made by the petitioner against the respondent No. 1 relates to granting by him good work allowance to the sweepers of Small Town Committee, Dhuri at the rate of Rs. 5 p.m. for a period of three months in order to induce them to vote for him.

55. In the employment of the Small Town Committee, Dhuri, there were 43 sweepers each of whom used to get Rs. 27 per month as his pay. They were only part time employees and not whole time servants. Shri Ved Parkash (P.W. 5), who has been Secretary of the Small Town Committee, Dhuri, for the last seven years, deposed that the sweepers have off and on been submitting applications for grant of increment in their pay, but the Committee did not make any recommendation in this connection to the higher authorities. S. Kashmir Singh, *Ex-officio* President of the Small Town Committee, supported the Secretary by stating that the Committee did not make any recommendation to the Government for grant of any increase in their pay or any allowance or bonus to them. Both these witnesses are quite independent and there are no reasons to disbelieve them. This is, therefore, certain that the Small Town Committee did not formally or informally make any move for increase in the pay of sweepers or for grant of any good work allowance to them.

56. It appears that a representation was made by the sweepers direct to the Local Self Government Department. That was forwarded to the President Small Town Committee, Dhuri, for his opinion and views (*vide* endorsement No. St/194/6-51/18961, dated 16th November 1951, marked as Ex. P. 11/A). In the forwarding endorsement it was pointed out by the Under Secretary that policy of the Government was to reduce the number of sweepers by one half if they were to be made whole time servants. It was added for information of the Small Town Committee, Dhuri, that even at an expensive place like Patiala the sweepers were part time servants and were paid Rs. 12 p.m. as pay and Rs. 13 p.m. as Dearness Allowance, i.e., Rs. 25 p.m. in all. As stated by Shri J. D. Khanna (P.W. 23), Under Secretary in the department of Local Self Government, no reply was received from the President of the Small Town Committee, Dhuri.

57. On 28th of November, 1951, the respondent No. 1 as Minister Incharge Local Self Government Department passed an order increasing the pay of the sweepers of the Small Town Committee, Dhuri, from Rs. 27 to Rs. 32 per month. It was mentioned in the order (Ex. P.10/A) that the President and the members of the Small Town Committee also agreed that the pay should be increased. The department objected to the order of the Hon'ble Minister when instead of increase in pay, good work allowance was granted at the rate of Rs. 5 p.m. per sweeper for a period of three months. As stated by Mr. J. D. Khanna, an order was accordingly issued on 7th December 1951 (marked Ex. P.12/A), granting good work allowance to the sweepers of Small Town Committee, Dhuri, at Rs. 5 p.m. for three months only, i.e., December, 1951 and January and February, 1952.

58. From the side of the petitioner oral evidence was lead to show as to why the sweepers of Small Town Committee, Dhuri, who being adult persons were all voters in Dhuri constituency, were singled out for this preferential treatment.

59. M. Jagjit Singh (P.W. 28), Darogha Small Town Committee, stated before us that nearly 1½ months before the holding of the elections the respondent No. 1 called him at his house at Dhuri and inquired about the number of sweepers in the service of the Committee and the pay that was drawn by them. When the requisite information was supplied by him, the latter said that in case the sweepers were willing to vote for him their pay would be increased. The witness added that in order to ascertain the wishes of the sweepers he went to the locality in which their houses are situated and had a talk with five of them. Names of four of those sweepers were described by him as Dalip Singh, Hira, Makhan and Neki. The sweepers promised to communicate their decision on the next day after consulting their colleagues. Next morning, according to the witness, the five sweepers came to his house at about 6-30 or 7-0 A.M. and stated that they were ready to vote for the respondent No. 1 in case an increase was made in their pay. He accordingly took them to the house of the respondent No. 1 and apprised him of the sweepers' decision when the latter told them that he would order an increase of Rs. 5 p.m. in their pay.

59A. Out of the sweepers named by M. Jagjit Singh Darogha, Dalip Singh, Jug Lal and Hira (P.Ws 12, 13 and 14) were examined. They have all deposed about their meeting. M. Jagjit Singh Darogha and holding a consultation

amongst themselves and the other sweepers on the same evening and next day informing the respondent No. 1 about their willingness to vote for him in case their pay was increased by Rs. 5. To discredit their testimony the counsel for the respondent No. 1 pointed out to one discrepancy. It was urged that according to Jug Lal, the respondent No. 1 was standing on the roof of his house when the five sweepers went to him to communicate their decision while Hira made him sit in a chair in a verandah. This is a minor contradiction and after lapse of nearly one year even the most truthful witnesses could forget such an unimportant detail as to whether a person was sitting or standing and if so whether on the roof or in a verandah of his house. We are therefore not prepared to discard the evidence of these witnesses merely on account of this ordinary discrepancy.

60. Two other sweepers out of those who had taken part in the sweepers meeting to consider the offer made by the respondent No. 1 were also examined. They are Sheo Chand and Tilak Ram (P.Ws. 39 and 40). They fully support the other three sweepers already referred to above. Regarding them as well an objection was taken that they are discrepant on the point whether at the place of holding the meeting there was any artificial light or not. One of them mentioned that a lamp of the Small Town Committee was shedding light. Again this has to be ignored as an ordinary discrepancy. The power of observation of different persons varies considerably and it is possible that one of them may not have noted the existence of the Committee lamp near the place where the gathering was held.

61. There is a third set of witnesses comprising of Sadhu Ram and Mohan Lal. Mohan Lal (P.W. 54) does not say anything regarding the circumstances under which good-work allowance was granted to the sweepers of the Small Town Committee, Dhuri, for a period of three months. Moreover, he was a polling agent of Shri Sarwan Singh respondent No. 8 and as such cannot be regarded as a disinterested witness. His saying that he was a supporter of Shri Tirath Singh does not appear to be correct. Sadhu Ram (P.W. 67), who during election days was a practising lawyer, at Dhuri and was a supporter of Shri Rajinder Paul respondent No. 6, stated about his meeting the sweepers at Dhuri and to have been told by them that they would vote for the respondent No. 1 as good work allowance had been granted to them by him. He could not tell the names of the sweepers to whom he had talked and also was not sure about the exact words used by them. Such an indefinite statement is, therefore, of no great help.

62. From the respondent's side Chaudhri Sadhu Ram (P.W. 4), a member of the Small Town Committee, Dhuri, was examined. His evidence is to the effect that the sweepers had submitted an application to Shri Tirath Singh when he came to Dhuri requesting for increase in their pay. He added that the respondent No. 1 inquired from him if he had any objection to the pay being increased, on which he replied in the negative. This witness acted as a seconder of Shri Tirath Singh and was thus interested in him. Moreover, he is one of the persons to whom some Government or Small Town Committee land was given by the respondent No. 1 without charging any compensation, a matter which will be discussed in connection with the next issue. No reliance can, therefore, be placed on his testimony. There also appears to be no point in the Minister taking the opinion of only one member of the Committee, when the President and the Secretary were available, before taking such an important step as increasing the pay of sweepers.

63. Shri Tirath Singh in his statement took up the plea that nearly three or four months before the polling started he happened to go to Dhuri when the sweepers of the Small Town Committee submitted a written representation to him that their pay should be increased on which he orally consulted the members of the Small Town Committee and also the President and accordingly passed an order, on 28th November, 1951, that their pay be increased by Rs. 5. There is absolutely no evidence that the President of the Small Town Committee or any members were consulted. The trend of the evidence given by the President of the Committee is such that it can only lead to this inference that he never recommended or agreed to the pay of the sweepers being increased. Significantly no other members of the Small Town Committee were examined and to support his case the respondent No. 1 could not find any other person except Chaudhri Sadhu Ram (P.W. 4) who had reasons to be under his obligation. It does not stand to reason that a representation should have been made nearly four months before the polling was to commence, but an order was passed only about a month earlier and that too without consulting the Small Town Committee.

64. The counsel for the respondent No. 1 urged that it was very easy for the petitioner to get hold of some sweepers to support his case. If so, the respondent No. 1, could also produce some sweepers in the employ of the Small Town Committee who could have deposed that no inducement was offered to them and they did not agree to vote for Shri Tirath Singh on account of any offer for increasing their pay. In any case in the absence of anything to discredit the testimony of the sweepers and the Darogha of the Small Town Committee, we have no hesitation in holding that their evidence is substantially correct and should be relied upon.

65. The circumstances as well fully fit in with the oral testimony. The policy of the Government was not to increase the pay of part time sweepers, so much so that at the capital of the State the sweepers of the Municipality were only being paid Rs. 25 P.M. How could then any distinction be drawn between the sweepers of the Small Town Committee, Dhuri and the Committees and Municipalities functioning in other towns? The respondent No. 1 would not have granted an increase in the pay of the sweepers of only one Small Town Committee unless that was for a special reason. Even when the department objected to this increase on the ground that sweepers of other committees will claim similar advantage, good work allowance was insisted upon and was got sanctioned for them. Admittedly sweepers in no other committee were granted any increment or good work allowance.

66. The direct as well as the circumstantial evidence thus proves to the hilt the allegation against the respondent No. 1 that he made an offer of increasing their pay to the sweepers of the Small Town Committee Dhuri, in order to induce them to vote for him. That increment was actually granted though due to departmental intervention it had ultimately to take the shape of good work allowance for three months. The period for which this allowance was given is also indicative of the corrupt intention of the respondent No. 1. We, therefore, decide the issue in favour of the petitioner.

67. *Issue No. 6.*—Still another allegation of a corrupt practice amounting to bribery made against the respondent No. 1 was that in abuse of his powers as Minister he gave without any compensation some municipal land to the following 24 persons in order to persuade them to vote for him:—

1. Ramji Dass Ghanauriwala.
2. Jagan Nath, Burma Shell, Commission Agents.
3. L. Satya Paul Jain.
4. L. Raunaq Ram.
5. L. Megh Raj.
6. L. Nauhar Chand.
7. L. Mula Ram.
8. L. Radha Kishan Herike.
9. Sadhu Ram Mahasha.
10. Sant Singh Zaildar Kakerwal.
11. Ch. Nauhar Chand.
12. Ch. Baru Mal.
13. Chanan Ram Chamba Ram.
14. Hari Chand Herike.
15. Asa Ram Nand Lal.
16. Mangu Mal.
17. Lal Chand.
18. Diali Ram.
19. Asa Ram.
20. Rulia Ram.
21. Ch. Sadhu Ram.
22. Ujagar Ram Ghanauriwala.
23. Harikishan Dass.
24. Ramji Dass Budh Ram.

68. In the town of Dhuri there is one road known as Sangrur Road. Some shops facing another Bazar had their back towards that road while in

the opposite direction there were other shops which opened that side. On the back side of the shops which did not open on this road some land was lying vacant upto a drain at a distance of 8 or 9 feet.

69. On 15th July 1951 Sadhu Ram son of Mangal Mal owner of some shops on the Sangrur Road submitted an application (Ex. P. 5/A) to the respondent No. 1, in his capacity as Minister for Local Self Government, requesting that the land at the back of his shops upto the drain may be transferred to him on payment of compensation so that he may be able to construct verandahs thereon. On this application the respondent No. 1 called for a report from the President of the Small Town Committee. His order was in the following words:—

“President Small Town Committee to report regarding the Government land on which the applicant desired to build.

(Sd.) TIRATH SINGH,
Minister for Local Self Government.
15-7-1951”.

Afterwards another application was submitted to him on behalf of 20 persons including Ramji Dass, Sadhu Ram, Sant Singh and L. Asa Ram etc., seeking permission to construct verandahs on the vacant land lying at the back of their shops upto the drain. On this application (marked Ex. P.4/A) the respondent No. 1 granted permission and further ordered that they were allowed to make the necessary constructions forthwith. This order by which the sanction was granted is dated 23rd September 1951. Later on four other shop-owners obtained similar permission from him (*vide* application marked as P. 8/A, bearing the orders of the respondent No. 1, dated 6th October 1951).

70. When constructions on the vacant land towards the back side of shops were nearing completion the twenty men, to whom permission was granted by the respondent No. 1, applied to the President of the Small Town Committee for sanction. The President refused permission and ordered these constructions to be demolished as they had been made without previous permission from the Committee. On that Ramji Dass and some other shop keepers went in appeal to the Deputy Commissioner, Barnala. He, by his order, dated 29th September 1952 (copy marked as p. 39) held that demolishing the structures already made would result in great hardship and, therefore, made a recommendation to the Government that the land on which verandahs had been constructed may be given to the appellants at the rate of Rs. 35 per square yard.

71. The respondent No. 1 in his statement mentioned that while granting sanction for constructions he was under the impression that the land belonged to the owners of shops and was not property of Government or of the Small Town Committee. He added that in the same line there were certain other shops which had already verandahs on the back side. This much, however, was admitted by him that he knew that out of the owners of the shops already having verandahs on the back side compensation had been charged by the Government from Chaudhri Siri Nivas in respect of ten or twelve shops.

72. The order of the respondent No. 1, dated 17th May 1951, does show that he was under no misapprehension regarding the ownership of the land. In that order, which has been quoted above, it was specifically mentioned by him that the land belongs to the Government. He also had the knowledge that atleast from the owner of 10 or 12 shops compensation had been charged by the Government before sanction for utilizing the land lying on the back side was granted. In spite of all that to grant permission for constructing verandahs by enclosing that vacant land, without charging any compensation, could not be justified by any rules. It is not understandable as to when the respondent No. 1 at once granted sanction whom on a previous similar application he had called for the report of the Small Town Committee. Undoubtedly, therefore, permission was granted in an irregular manner and with some ulterior motive. It remains to be ascertained as to whether that motive was inducing the owners of those shops to vote for him or it could possibly be some thing else.

73. The petitioner did not produce any reliable evidence from which the act of the respondent No. 1 in granting sanction for constructing verandahs on the land lying at the back of 24 shops could be connected with his attempt to induce shop owners to vote for him. Only one Sant Singh Zaildar was produced in this connection, but he is a man on whose testimony we are not prepared to rely as he was the proposer of the rival candidate Shri Sarwan Singh. It is also worth nothing that according to Sant Singh he was the man who had taken the application to the respondent No. 1 after settling the whole matter with him, but

strangely the application does not bear his signature. It was of course intended to be signed by him and the other owners and thus his name was typed on it, but below the typed portion his signature does not exist. This makes the evidence of that witness still more suspicious. No other shop owner was examined from the petitioner's side. Two of them appeared from the respondent's side and do not say anything which may be helpful in proving the allegation covered by this issue.

74. The permission for making constructions was granted in the month of September, which was some months before the elections were to be held. It was too early at that time for an ordinary person to induce voters to vote for him. The circumstances under which the respondent No. 1 acted are of course highly suspicious. But more suspicion, as urged by the respondent's counsel, cannot be allowed to take the place of proof. We, therefore, hold that this issue has not been fully proved and decide it against the petitioner.

75. *Issue No. 7.*—The respondent No. 1 in abuse of his powers as Minister for Education was also said to have indiscriminately opened schools in his constituency with the object of inducing voters of those villages to vote for him. The following twelve schools were mentioned in this connection in para. IV(a) of list A of the election petition:—

1. Middle School Bhandhauri.
2. Lower Middle School, Benra.
3. Lower Middle School, Ladda.
4. Lower Middle School, Bhalwan.
5. Primary School, Isee.
6. Lower Middle School, Bararwal.
7. Primary School, Kakarwal.
8. Primary School, Ghanaur.
9. Lower Middle School, Kanjhla.
10. Primary School, Kaulsehri.
11. Primary School, Dhuhra.
12. Primary School, Babanpur.

76. Dr. Harnam Singh (P.W. 3), Director of Education Pepsu, is the most important witness in connection with this issue. He deposed about the opening of new primary schools and raising the standard of other schools by the respondent No. 1. The schools whose standard was raised to Middle and Lower Middle were situated at Bhandhauri, Benra, Ladda, Bararwal, Kanjhla and Bhalwan. The dates on which this was done ranged between 18th July to 18th December, 1951. New Primary Schools at Isee, Kakarwal, Ghanaur, Kaulsehri and Dhura were opened on 31st December, 27th September, 27th September, 11th August, and 12th of June 1951 respectively. Either for opening new schools or raising the standard of those which were already in existence and functioning the respondent No. 1 did not consult the education department or receive any proposal through the proper channel. In all these cases he had been acting on his own initiative. Subsequently the whole matter had to be regularised by the department concerned.

77. The statement of the Director of Education also shows that from May 1951 to January, 1951, in all 31 schools were newly opened and 11 schools were raised to Middle standard in Pepsu State under orders of the respondent No. 1. Statements in respect of these schools (Exs. R. 9 and R. 10) were prepared by him with the help of the departmental record.

78. The schools which were newly opened or whose standard was raised to middle or lower middle were not confined to the area of Dhuri constituency. Out of the newly opened schools ten came to the share of Dhuri Tehsil, including two which were shifted there from other places. The number of schools whose standard was raised during the above mentioned period came to five in respect of Dhuri Tehsil. Beyond doubt Dhuri Tehsil got lion's share out of the schools which were newly opened or whose standard was raised, but it will be incorrect to say that the activities of the respondent No. 1 were solely confined to the villages in his constituency.

79. Shri Hem Raj (R.W. 2), Assistant Incharge Finance Department, appeared as a witness from the side of the respondent No. 1. He brought certain records of his department. According to him in the budget for the year 1951-52 a provision of Rs. five lacs was sanctioned for development schemes of the education

department. The education department was required to prepare schemes for utilising the amount which had been allotted. Three separate schemes were submitted, one of which (No. A/1) contained demand for Rs. 92,500 for opening fifty new primary schools. The Development Fund Committee ultimately sanctioned Rs. 75,000 for this purpose. The proceedings of the Development Fund Committee were finally approved on 24th September 1951 after which the funds were available for being utilized.

80. Even the counsel for the respondent No. 1 had to concede that the manner in which the schools were opened or their standard was raised was not strictly regular as the Education Department was not at all consulted. It was, however, urged that the respondent No. 1 wanted to avoid the proverbial departmental delays and in his anxiety to spread literacy and utilise the funds acted in a manner which was expeditious though not in conformity with the accepted rules of procedure.

81. The funds sanctioned could be utilized upto the end of March as the new financial year begins from 1st of April. There is also nothing to show that the respondent No. 1 may have called for any proposal from the Education Department which may not have been submitted promptly. It will be too much to presume that even without any basis he expected the department to sit tight over proposals for utilising the funds which had been sanctioned. No other view is therefore, possible except that the respondent No. 1 was acting in an arbitrary manner and was bestowing his munificence more liberally in the villages of his constituency than in other parts of the State. It still remains to be determined whether this opening of new schools or raising the standard of some others was with the object of inducing electors to vote for him or was the result of some peculiar notions which he may have formed regarding his duties and responsibilities as a Minister. The opening of more schools in the villages of his constituency could very well be the result of his natural anxiety to win the favour and support of the population in that area without there being any bargaining or attempt at inducing any particular voters to prefer him over other candidates.

82. Some witnesses were produced in order to establish that new schools were opened or their standard was raised by the respondent No. 1 merely with a view to induce voters to vote for him. Raghbir Singh and Pritam Singh (P.Ws. 35 and 36) are of village Banbhaura where, on 28th November 1951, the lower middle school was raised to middle standard. The evidence of these witnesses is somewhat contradictory in nature and cannot be relied upon. According to Raghbir Singh he had read an address of welcome to the respondent No. 1 when he visited Banbhaura in the month of Jeth or Har (corresponding to June-July) demanding the opening of a middle schools as a suitable building had already been constructed for this purpose by the village people. A little later in his statement he took a somewhat different position by stating that the address was read by another man but had been drafted in consultation with him. He did not even stick to that version and ultimately disowned responsibility even for the draft of the address. Such a witness can hardly be regarded as truthful. It also cannot be lost sight of that he was polling agent of respondent No. 8, the chief opponent of Shri Tirath Singh during elections. Pritam Singh, the other witness, had to admit that when the respondent No. 1 visited the village in the month of Jeth or Har there was no talk about votes. Thus the allegation that the standard of the school was raised in order to induce voters to support the respondent No. 1 falls to the ground. Probably the lower middle school was raised to middle standard as a proper building had been constructed by the village people.

83. Kishan Singh (P.W. 43) and Bagga Singh (P.W. 51) deposed to the raising of the school at village Bhalwan to lower middle standard. From the evidence of Kishan Singh it, however, appears that when the respondent No. 1 came to their village the school had already been raised to lower middle standard. Bagga Singh's statement does not fit in with that of the other witness. None of them can, therefore, be relied upon.

84. Babu Singh, Mukand Singh and Sadhu Singh (P.Ws. 45, 46 and 47) are of village Benra, where on 18th December 1951 the school was raised to lower middle standard. If their statement are to be believed the respondent No. 1 had on the same day that he promised to raise the lower primary school to lower middle standard had as well made an offer of forming a panchayat. The evidence of B. Mohinder Singh (P.W. 65), Superintendent Panchayat Department, shows that the Panchayat at village Benra was constituted on 23rd September 1951. He proved the correctness of the report made by him on 28th September 1951 (marked as Ex. P.37/A). There is nothing to doubt the veracity of this report and it will show that the respondent No. 1 had gone to village Benra in the last week of September and not about 20 days or a month before

the commencement of polling as stated by Mukand Singh and Sadhu Singh. It also cannot be expected that the respondent No. 1 could directly ask the villagers to vote for him on the understanding that he would raise the standard of their school when he was accompanied by some other Government officials, like the Panchayat Superintendent, the Deputy Commissioner and the Superintendent of Police.

85. Harcharan Singh (P.W. 48), Kartar Singh (P.W. 57) and Chand Singh (P.W. 59) described the visit of the respondent No. 1 to their village. A new primary school was opened at that village on 31st December, 1951. According to Harcharan Singh, the respondent No. 1 had come to the village about two or three months before the holding of the elections and requested the village people that if they would vote for him he would open a new school and form a Panchayat. The witness did not mention that at the time of the actual opening of the school the respondent No. 1 had again come to the village. Kartar Singh went on to say that before the school was actually opened, which was only a few days before the commencement of polling, he had a talk with the respondent No. 1. If so, it would mean that the respondent No. 1 again visited the village when the school was started. Chand Singh does not say anything about the respondent No. 1 going to the village and promising to open a school in case the village people were prepared to vote for him. He merely stated that he had met the respondent No. 1 at the house of Master Mit Singh when he requested by the respondent No. 1 to ask members of the home-guard to vote for him. Master Mit Singh (P.W. 19) is altogether silent on this point. These witnesses of village Isce, therefore, do not appear to be reliable.

86. Sant Singh Zaildar and Bachittar Singh petitioner have also said something regarding the opening of schools by the respondent No. 1 in their statements. The petitioner admitted that he had been working for S. Sarwan Singh respondent No. 8 for six months before the elections as he was General Secretary of the Akali Party for Dhuri constituency. Sant Singh, as already pointed out above, was a proposer of that candidate. Both of them are partisan witnesses and not much of weight can be attached to their testimony.

87. The evidence for proving the alleged object of the respondent No. 1 in opening new schools or raising their standard in some of the villages, of Dhuri constituency, is not altogether satisfactory. The manner in which the respondent No. 1 acted does give rise to some suspicion, but the circumstances are capable of even other explanations. We, therefore, hold that the petitioner has failed to prove this issue.

88. *Issue No. 8.*—Seventeen persons of Dhuri constituency were alleged to have been appointed as teachers by the respondent No. 1 in order to induce them to vote for him. The names of those teachers were given in para. IV(b) of list A.

89. The Director of Education compiled a statement (Ex. R. 11) showing the persons who were appointed teachers directly under the orders of the respondent No. 1. In some of these cases the respondent No. 1 appointed teachers on particular posts while in others he directed the District Inspector of Schools to appoint them against any vacancies which may be there in the department. Two of the teachers, who were appointed, were not even matriculates which is generally the lowest qualification required from new entrants in the cadre of lowest grade teachers. These appointments having been made in an irregular manner, as the department was not consulted, had to be regularised later on.

90. If teachers had only been appointed by the respondent No. 1 in the villages of his constituency probably it may have been said that his object was to induce them to vote for him. Actually appointments were also made in other parts of the State in the same irregular manner. In all a list of forty-seven such teachers was furnished by the Director of Education.

91. There is practically no evidence to show that the appointments of teachers were made with the object of inducing them to vote for the respondent No. 1. Master Waryam Singh of village Kheru (P.W. 8) did appear as a witness for the petitioner. He made a statement that he had submitted an application for employment in the Education Department personally to the respondent No. 1 when he had gone to village Ghanauri Kalan on tour. The witness added that the respondent No. 1 told him that he would be appointed as a teacher but should help him in his election. Further on it was mentioned that S. Kultar Singh was also appointed as a teacher by the respondent No. 1 on the same understanding. Kultar Singh was not examined by the petitioner. Master Waryam Singh's uncorroborated statement on this point cannot be believed.

He had to admit that the application was presented by him in a meeting attended by nearly one thousand persons including Shri Payara Lal, Additional District Inspector of Schools. Even a most reckless person would not openly say before such a huge gathering that he will appoint a man as teacher only if he promised to vote for him or secure the votes of other persons.

92. The issue thus stands not established and is decided against the petitioner.

93. *Issue No. 9.*—The Sanatan Dharam School at Dhuri was alleged to have been granted recognition by the respondent No. 1 in order to induce the persons interested in that school to vote for him. Undoubtedly the respondent No. 1 granted provisional recognition to the school for one year on 1st December 1951, as stated by the Director of Education. No application or representation had been received by the department from the school.

94. This was, however, not the only school to which recognition was granted by the respondent No. 1 in this direct manner without consulting the education department. A statement (Ex. R. 12) was compiled which shows that from May 1951 to 1st of January 1952 in all 45 schools were recognised. In the case of 23 schools the department had made recommendations in the ordinary manner while 22 schools were granted recognition directly by the respondent No. 1. These schools are not from Tehsil Dhuri only, but cover almost all the districts of Pepsu State.

95. The mere act of granting recognition to the Sanatan Dharam School without consulting the department is by itself not sufficient to lead to an inference that this was done in order to induce certain persons to vote for the respondent No. 1. For that we have to look to the direct evidence. Shri Mohan Lal Pleader of Dhuri (P.W. 54) is the principal witness in this connection. He is manager of the Sanatan Dharam School and stated that he had met the respondent No. 1 in June, 1951, and requested him to recognise the school. The latter expressed his inability to do so on the ground that the policy of the Government was not to recognise denominational schools. The witness added that the respondent No. 1 called at his house in November, 1951, and told him that he would grant recognition to the school if Sanatanists would be prepared to support him. An application was, therefore, submitted to the respondent No. 1 by the President of the school on 25th November, two days after which the school was recognised. The formal order granting recognition was issued on 1st of December, and was received by the Managing Committee on 18th of that month.

96. This witness had admittedly worked as polling agent for Shri Sarwan Singh respondent No. 8. As he is not a disinterested witness it is not safe to base any finding on his testimony. From the respondent's side Chaudhri Daulat Ram President of the school was examined who denied that the respondent No. 1 had ever asked him to vote for him. The President of the school committee stated about submitting an application (Ex. P.32/A) in the office of the Education Minister accompanied by a plan of the school building. In the face of contradictory evidence from the opposite sides it would be difficult to hold that the Sanatan Dharam School was recognised particularly with a view to induce any persons to vote for the respondent No. 1. The issue is, therefore, decided against the petitioner.

97. *Issue No. 10.*—Para. VI of list A contains an averment that the respondent No. 1 personally organised Panchayats at villages, Dhura, Bhasaur, Barawal, Benra Isee, Mimsa, Ghanaur Kalan, and Bhanbhauri in order to persuade the people of those villages to vote for him. S. Puran Singh, Director of Panchayats (P.W. 53) stated, on the basis of his office record, that Panchayat at the following villages were formed on the dates shown against them:—

- (i) Dhura 21st November 1951.
- (ii) Bhanbhauri 25th November 1951.
- (iii) Bhasaur 21st September 1951.
- (iv) Barawal 24th September 1951.
- (v) Benra 23rd September 1951.
- (vi) Ghanaur Kalan 24th September 1951.
- (vii) Mimsa 21st September 1951.

According to him no Panchayat was formed at Isee as was alleged in the petition. It was further mentioned that the rules under the Panchayat Raj Act have not been notified as yet. The Director of Panchayat had no personal knowledge regarding the forming of Panchayats by the respondent No. 1 as he joined

that department in the month of June, 1952, long after the elections had taken place in the country.

98. B. Mohinder Singh, Superintendent of Panchayats (P.W. 65), is the person who was present at the time of forming Panchayats at the villages mentioned above. He stated that a notification had been issued by the Government for formation of Nagar Sabhas and Panchayats in 59 villages of Dhuri tehsil and eight villages of Tehsil Barnala. Actually, according to him, 26 Panchayats were only formed in some of the villages of Tehsil Dhuri including those at Dhura, Bhasaur, Bararwal, Benra, Mimsa, Ghanauri Kalan and Bhanbhauri. The witness also proved the reports made by him regarding these Panchayats (marked as Exs. P. 33/A to P. 37/A).

99. From the reports of the Superintendent Panchayat department and his evidence it is clear that the respondent No. 1 had personally gone to six villages. That fact has even been admitted by the respondent in his statement. On all these visits, as stated by B. Mohinder Singh, the respondent No. 1 was accompanied by the Deputy Commissioner and the Superintendent of Police of the District. The Superintendent Panchayats made it clear that on these occasions advantages of having Panchayats were explained to the residents of these villages without any one asking them to vote for the Congress candidate or any particular individual.

100. The forming of Panchayats was not regular as no rules had as yet been finalised under the Panchayat Raj Act. These Panchayats were also confined to the villages comprised in Dhuri constituency, from which the respondent No. 1 was a candidate. These are to some extent suspicious circumstances, but in view of the evidence of B. Mohinder Singh, it will not be proper to hold that the Panchayats were formed after the village people had been told by the respondent No. 1 to vote for him. It also becomes unnecessary to discuss the evidence of some of the residents of those villages, who have made allegations against the respondent No. 1 that he had requested them to vote for him in case they wanted Panchayats to be formed. Those statements are mutually contradictory and cannot be preferred over the independent testimony of the Superintendent of Panchayats. Possibly the respondent No. 1 in his zeal to impress the residents of his constituency formed Panchayats without caring to ascertain that the necessary rules under the Panchayat Raj Act had been finalised and duly notified. This rash act on his part, in the absence of any other reliable evidence, cannot be interpreted as a corrupt practice. The issue, is, therefore decided against the petitioner.

101. *Issue No. 11.*—There is no material from which the allegation contained in Para. VII of list A may be substantiated. It was alleged that on 6th January 1952 the respondent No. 1, through his influence as Minister, arranged to have erected a water outlet for village Benra on the express condition of the village people voting for him.

102. S. Mehar Singh, Overseer Canals Ladda (P.W. 30) gave evidence to the effect that in January, 1952, orders (Ex. P. 19/A) for opening a water outlet for village Benra in addition to the one that was already in existence were issued by the department and in compliance therewith he went to the spot on the sixth of that month and got a new pipe fitted in his presence. He was sure that neither the respondent No. 1 was present when the pipe was fixed nor was seen by him in the village that day. The order referred to by the overseer is of the Canal Department and there is no evidence to show that the respondent No. 1 was instrumental in its issue.

103. S. Gurdev Singh S.D.O. Canal (P.W. 29) merely produced the record on the basis of which S. Mehar Singh gave evidence. Mukand Singh, Sadhu Singh and Babu Singh of village Benra were also examined in this connection from the petitioners side. Babu Singh even went to the extent of saying that two new water outlets were opened for their village and on the date that this was done the respondent No. 1 was present in the village, a fact which has been proved by Mehar Singh overseer. Mukand Singh as well mentioned about his seeing the respondent No. 1 in the village on the morning of 6th January. These witnesses do not appear to be reliable and have also not been believed by us in connection with the allegations regarding schools and Panchayats.

104. For want of reliable evidence the issue is decided against the petitioner.

105. *Issue No. 12.*—By way of an allegation of undue influence it was stated in para. I of list B that F.C. Dhanna Singh coerced the villagers of Ghanauri to vote for the respondent No. 1 and on their refusal to do so, fired shots at them when a case under section 307 I.P.C. was registered against him and he was

sent up for trial. This Dhanna Singh was referred to as a body guard of the respondent No. 1. Three residents of village Ghanauri, called Sewa Singh, Mal Singh and Kirpal Singh (P.Ws. 32 to 34), were examined before us in this connection. Their statements are highly conflicting. It was stated by Sewa Singh that on the evening of 8th January at about 7 or 8 P.M. four or five men came to their village including Dhanna Singh. Dhanna Singh was further described to be wearing police uniform and was armed with a gun and a pistol. He requested the village people to vote for the respondent No. 1 and on their refusal to listen to him fired two shots in the air to frighten them. The witness added that he along with some other persons caught hold of Dhanna Singh when he fired two more shots from his pistol as his gun had slipped away from his hands. Mal Singh did not say anything about firing of any shots by Dhanna Singh from a pistol. Kirpal Singh went a step further by saying that Dhanna Singh was not beaten by him or any other villagers when they caught him. He also made a positive statement that the gun of the police constable had not slipped away from his hands. Sewa Singh contradicts him on both these points.

106. This was admitted by Sewa Singh witness that in the case which was started against Dhanna Singh he was acquitted by the Magistrate 1st Class, Malerkotla. From the respondent's side a copy of that judgment (Ex. R.22) was also produced. The respondent as well mentioned that he had made a ref (Ex. P. 30/A) in police station Dhuri when it was brought to his notice that revolver of his gun-man, who had been left behind by him at Bamal, had been snatched by some persons who were also keeping him in illegal confinement.

107. The exact nature of the incident which happened at village Dhanauri has not been established beyond doubt. Further there is not an iota of evidence to show that whatever was done by Dhanna Singh was with the knowledge or under instructions of the respondent No. 1. The issue remains unproved and is decided against the petitioner.

108. Issue No. 13.—The respondent No. 1 was alleged to have visited village Manwala on 10th January 1952 and to have coerced the villagers of that place not to vote by show of guns.

109. Sukdev Singh and Jagjit Singh of that village (P.Ws. 59 and 60) were examined from the petitioner's side but have given conflicting versions. Sukhdev Singh's story was that the respondent No. 1 accompanied by three or four other persons came to the village on the morning of 10th January. On being told by the villagers that they had decided to vote in an independent manner he (i.e. the respondent No. 1) started towards Dhuri in his Jeep and after he had gone nearly 100 yards a shot was fired towards them. This firing of the shot, according to the witness, frightened the village people and some of them later on refused to go to the polling Station. Jagjit Singh was more zealous to support the Petitioner's case and attributed certain other acts to the respondent No. 1. He mentioned that the respondent had told them that in case they would not vote for him he would shoot at them. Further more it was added by him that when this talk was going on the respondent No. 1 had pointed out the barrel of his gun towards him and Sukhdev Singh. Sukhdev Singh did not say a word about the respondent No. 1 pointing out his gun towards anybody or directly saying that he would shoot them in case they will not vote for him. As a matter of fact he was not even sure as to who had fired the shot.

110. The evidence regarding this allegation being of a highly unsatisfactory nature the issue is decided against the Petitioner.

111. Issue No. 14.—Nineteen persons of village Dhuri were stated to have been called to the police station at that place on 1st January, 1952, at the instance of the respondent No. 1. They were alleged to have been threatened with prosecution unless they voted for him.

112. Arjan Singh (P.W. 70) made a statement that in connection with making a cut in the canal bank he and certain other men were called to the police station Dhuri. He added that after having been detained for three or four days the Sub Inspector of Police told him that he would be released if Shri Tirath Singh so wanted. As the respondent No. 1 had come to the police station so he got his release.

113. The witness was not sure of the position to be taken by him. At one stage he said that he did not see the respondent No. 1 himself in the police station, but was told about his presence by some other persons. A little later he modified his version and stated that he along with two or three other men had been called by the respondent No. 1 outside the police station and were told to vote for him

if they wanted their liberty. Not being satisfied with this account he again shifted his ground by saying that he and the other persons were called in the police station at about 10 A.M. and were released that very day after they had a talk with the respondent No. 1 outside the police station about the time of sun set.

114. We do not consider Arjan Singh to be at all reliable and decide the issue against the petitioner.

115. *Issue No. 15.*—The respondent No. 1 was said to have obtained the assistance of the following nine Government servants in order to improve the prospects of his success in election:—

- (1) Master Mit Singh.
- (2) Master Bhag Singh.
- (3) Master Joginder Singh of School Mimsa.
- (4) Master Joginder Singh.
- (5) Master Payara Lal of School Banbhaura.
- (6) Master Dalip Singh.
- (7) Master Kishori Lal of School Malerkotla.
- (8) Balwant Singh, Superintendent, Punjabi Department, Patiala.
- (9) Doctor Sucha Singh, Bahadurgarh Dispensary.

116. Masters Mit Singh, Bhag Singh, Joginder Singh, Payara Lal (P.Ws. 19 to 22) appeared from the petitioner's side, but denied to have in any way worked for the respondent No. 1. They of course mentioned that the original orders regarding their appointments as polling officers were cancelled but from that no inference favourable to the petitioner can be drawn. Payara Lal and Joginder Singh made a remark that on 5th of January M. Sham Lal, clerk of respondent No. 1, had met them and told them and another teacher (M. Dalip Singh) that they would be relieved from the polling station and should then come to him in order to work for Shri Tirath Singh. It was strange that neither Joginder Singh nor Payara Lal met Sham Lal after they were free from their duties as polling officers. That goes to show that this part of their statements is not correct. Master Waryam Singh (P.W. 68) as well did not say a word about his working for the respondent No. 1 in any manner after he was employed as a teacher. There is thus no evidence worth the name which may show that assistance of any Government employees was obtained by the respondent No. 1 in connection with his election. The issue is accordingly decided against the petitioner.

117. *Issue No. 16.*—Issue No. 5 has been decided in favour of the petitioner. The acts committed by the respondent No. 1, as covered by that issue, amount to corrupt practice of "Bribery". The respondent No. 1 granted good work allowance to the sweepers of the Small Town Committee, Dhuri, at the rate of Rs. 5 p.m. per sweeper for a period of three months from December, 1951 for inducing them to vote for him. Even the counsel for Shri Tirath Singh did not dispute the proposition that in case issue No. 5 is considered to have been proved this would amount to committing the corrupt practice of bribery by the respondent No. 1. We, therefore, hold that the respondent No. 1 has been guilty of corrupt practice of bribery as defined in clause (b) of sub-section (1) of Section 123 of the Representation of the People Act, 1951. The effect of this corrupt practice is that election of the returned candidate has to be declared void irrespective of the question whether that has materially affected the result of the election or not. It also entails disqualification under section 140 of the Representation of the People Act, 1951 for membership of Parliament and of the legislature of every State for a period of six years counting from the date on which the finding of this Tribunal shall take effect. The issue is accordingly decided in favour of the petitioner.

118. *Issue No. 17.*—The whole staff of the Panchayat department was alleged to have remained at Dhuri during election days and to have worked for the respondent No. 1.

119. The Superintendent of the Panchayat department (B. Mohinder Singh P.W. 65) admitted that from September, 1951, to January, 1952, he had his headquarters at Dhuri and nearly 35 members of the Panchayat staff remained stationed there. He, however, denied that any one of them in any way worked for the respondent No. 1 in connection with his election. The reason given for their staying at Dhuri for these four or five months was that Electoral Rolls of some of the villages in Tehsil Dhuri had to be prepared. The Panchayat staff

used to first prepare draft lists of voters for Panchayats on the basis of entries in electoral rolls as prepared for Assembly seats and later on go to villages and verify the correctness of the different particulars.

120. There is practically no evidence worth the name which may show that these members of the Panchayat staff were working for the respondent No. 1. This has also not been established that the Panchayat staff was stationed at Dhuri during the above mentioned period under direct orders of the respondent No. 1. The issue is, therefore, decided against the petitioner.

121. *Issue No. 18.*—With the knowledge and connivance of the respondent No. 1 the identifying figures on the ballot boxes at Bhadal-Wad polling station were said to have been changed.

122. The facts which have come to light as a result of the statement of Dr. Jaswant Singh, Principal Brijindra College Faridkot (P.W. 25), who during election days was acting as Presiding Officer at Bhadalwad, were that the order in which the ballot boxes were kept in the polling booth was wrong. The outer symbols on these boxes were correct, but it so happened that the ballot box of candidate No. 4 was placed at the place where the ballot box of candidate No. 1 should have been lying. Similarly the ballot boxes of candidates Nos. 3 and 1 were placed at places meant for ballot boxes of candidates Nos. 2 and 4 respectively. The ballot box of candidate No. 5 was at the correct place. The ballot box of candidate No. 2 was at the place where the ballot box of candidate No. 5 should have been. When this matter came to his notice on 8th January he submitted a report (Ex. P. 13/A) to Returning Officer Barnala through the Assistant Commissioner. The Returning Officer in his turn submitted a report (Ex. P. 28/A) to the Chief Electoral Officer.

123. There is nothing to connect the respondent No. 1 with the wrong arrangement of ballot boxes. It cannot be said that he had even knowledge that the order in which the ballot boxes had been kept in polling station Bhadalwad was not what it should have been. No responsibility, therefore, falls on him for any irregularity which may have been committed by the members of the staff at one of the polling stations.

124. The mistake in not keeping the ballot boxes in their proper order also does not appear to have affected the interests of any candidate. Voters put ballot papers in one ballot box or the other according to the symbols which are pasted outside them. The symbols being correct the wrong arrangement of the ballot boxes had no adverse effect. The issue is, therefore, decided against the petitioner.

125. *Issue No. 19.*—Another allegation against the respondent No. 1 was that the election staff of Dhuri constituency, including the Presiding and the Polling Officers, belonged to the Education Department of the State which was under his control as Minister of Education. Specific mention was made of Bibi Surjit Kaur who was said to be a sister of the respondent No. 1 and to have worked as polling officer at Dhuri polling station.

126. Bibi Surjit Kaur is not a sister of the respondent No. 1. She appeared before the Tribunal as P.W. 7 and admitted that she was one of the polling staff at Dhuri. According to her she is a cousin sister of respondent No. 1, being related to him in the fourth degree.

127. The contention that the entire staff of polling stations in Dhuri constituency consisted of employees of the Education Department is not well founded and does not find any support from the material on the record. The Returning Officer produced the list (Ex. P. 27/A) of polling staff for the different polling stations in Dhuri constituency. From that list it is evident that the employees of the Education department were not even in majority what to say of their constituting the entire staff. Employees of all the departments were made use of for working as Presiding and Polling officers at different polling stations. The issue is, therefore, decided against the petitioner.

128. *Issue No. 20.*—The staff of some of the polling stations in Dhuri constituency was alleged to have been got changed over night by the respondent No. 1 so that persons who were likely to help him and were of his choice could be appointed in their place. Names of nine such persons were mentioned, but the petitioners failed to lead any satisfactory evidence in this connection. The Returning Officer (P.W. 42) made a definite statement that the respondent No. 1 never interfered in the posting of the polling staff and thus the appointments were made by him in the discharge of his duties. He made the matter still

clearer by saying that the nine persons specifically named by the petitioner were not changed by him at the instance of Shri Tirath Singh.

129. What happened was that the Chief Electoral Officer had at first sent a list to the Returning Officer in which names of persons to be appointed as Presiding and Polling Officers were given. Afterwards another list was sent in which some modifications were suggested. In the first list names of S. Pura Singh, Tehsildar, Malerkotla, S. Charan Singh Tiwana, Sub Judge 2nd class, Malerkotla, S. Mohinder Singh, Sub Judge, 2nd class, Barnala, S. Pritam Singh Sekhon, Sub Judge, 2nd class, Barnala, S. Joginder Singh Mander, Sub Judge, 2nd class, Phul, S. Om Parkash Pandov, Lecturer, Intermediate College, Malerkotla, S. Kashmir Singh, Sub Judge, 2nd class, Dhuri and S. Babu Singh, F. & C.S.O., Barnala were suggested for working as Presiding Officers at Bhasaur, Mimsa, Bhadalwad, Qila Hakimian, Bamal, Benra, Dhuri and as reserve respectively. In the second list names of S. Dara Singh, Head Master, Normal School, Faridkot, S. Charan Singh Tiwana, Sub Judge, Malerkotla, Dr. Jaswant Singh, Principal, Brinjindra College, Faridkot, S. Inderjit Lal, Assistant Government Pleader, Patiala, S. Balwant Singh, Principal, Ranbir College, Sangrur, S. Payara Lal, District Inspector of Schools Barnala, S. Tikka Singh, Tehsildar, Dhuri and S. Lal Chand, Lecturer, Brinjindra College, Faridkot, were proposed for working as Presiding Officers.

130. If the petitioner had wanted to establish that the changes which were subsequently made were at the instance of the respondent No. 1 he should have examined the Chief Electoral Officer or he should have led some other independent evidence to prove his allegation. As the matter stands, there is no evidence to show that any changes in the polling staff were made at the instance of the respondent No. 1. The issue is accordingly decided against the petitioner.

131. *Issue No. 21.*—The counsel for the respondent No. 1 conceded that the election petition had been presented within limitation. The return of election expenses of the respondent No. 1 was notified in the supplement to Pepsu Government Gazette, dated 23rd March 1952. The election petition was presented personally by the petitioner to the Assistant Secretary Election Commission, India on 2nd April, 1952. Rule 119 of the Representation of the People (Conduct of elections and election petitions) Rules, 1951, provides that an election petition calling in question and election may in the case where such petition is against a returned candidate be presented under section 81 at any time after the date of publication of the name of such candidate under section 67 but not later than 14 days from the date of publication of the notice in the official gazette under rule 113 that the return of election expenses of such candidate and the declaration made in respect thereof have been lodged with the Returning Officer. Evidently the election petition was presented within 14 days of the publication of the notice in the official gazette regarding the return of election expenses of the successful candidate. The issue is, therefore, decided against the respondent No. 1.

132. *Issue No. 22.*—The last issue is regarding the relief. The counsel for the petitioner has not pressed for the alternative relief claimed in the election petition that in place of Shri Tirath Singh the respondent No. 8 (Shri Sarwan Singh) may be declared to have been duly elected to the Legislative Assembly of the Patiala and East Punjab States Union. Under Section 100 of the Representation of the People Act, 1951, where the Tribunal is of opinion that the result of the election has been materially effected by the improper acceptance or rejection of any nomination, the election has to be declared wholly void. While discussing issue No. 3 we have held that the improper rejection of the nomination paper of Mali Singh respondent No. 10 has materially affected the result of the election. There is also no evidence to show that in fact the respondent No. 8 had received a majority of valid votes or but for the votes obtained by the returned candidate by corrupt practices he would have obtained a majority of the valid votes. Shri Sarwan Singh can, therefore, in no case be declared to be the returned candidate.

133. The election of the respondent No. 1 to the Legislative Assembly of the Patiala and East Punjab States Union from Dhuri constituency cannot be maintained. Corrupt practice of bribery was committed and for that the respondent No. 1 has been personally proved to be responsible as a result of the trial of this election petition (*vide* issue No. 5). This alone would result in declaration of the election of the respondent No. 1 to be void. The rejection of the nomination of Shri Mali Singh by the Returning Officer for Dhuri constituency also materially affected the result of the election. The election from that constituency has, therefore, to be declared wholly void and the respondent No. 1

should be disqualified under section 140 of the Representation of the People Act, 1951.

134. We accordingly accept the election petition and declare the election from Dhuri constituency to be wholly void. We also record a finding that corrupt practice of bribery falling under clause (b) of sub-section (1) of Section 123 of the Representation of the People Act, 1951 is proved to have been committed by Shri Tirath Singh respondent No. 1 (*vide* issue No. 5). No other person or persons have been found connected with the above mentioned corrupt practice who may be named under section 99(1)(a)(ii) of the Representation of the People Act, 1951.

135. The corrupt practice of bribery, which has been proved to have been committed by the respondent No. 1, entails his disqualification under section 140 of the Representation of the People Act, 1951. Under provisions of that section he is disqualified for membership of Parliament and of the Legislature of every State for a period of six years to be counted from the date this order of the Tribunal is published in the *Gazette of India*.

136. So far as costs are concerned the respondent No. 1 should be made liable for them. He was occupying the responsible position of a Minister in the State of Patiala and East Punjab States Union for some months prior to the holding of elections. He abused his position and even those acts which have not been proved to amount to corrupt or illegal practices, due to the strictness of the proof required, were of a suspicious and irregular nature. He seems to have left no stone unturned in ensuring his success at the election without drawing any line between what was proper and improper. We, therefore, award the petitioner his costs and fix them at Rs. 250. He shall be entitled to recover that amount from the respondent No. 1.

Pronounced today, the 29th day of May, 1953.

(Sd.) JAGJIT SINGH, *Chairman*.

(Sd.) SHIVA GOPAL MATHUR, *Member*.

(Sd.) DALIP SINGH, *Member*.

[No. 19/81/52-Elec.III/12424.]

By Order,

P. R. KRISHNAMURTHY, *Asstt. Secy.*